

REMARKS

Applicants thank the Examiner for the consideration given the present application. Upon entry of the claim amendments herein, Claims 1-4 and 6-29 will be pending in the present application. Applicants have amended Claims 1 and 6 and canceled Claim 5. No new Claims have been added and no new matter is presented.

Specifically, Claim 1 has been amended to add the phrase "wherein the ratio of the pectin compound to the alginate compound is from about 0.1 to about 3, by weight." Support for this amendment is found in Claim 5 as originally filed.

Claim 6 has been amended to modify its dependency.

The Provisional Obviousness-type Double Patenting Rejection

Claims 1-4 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-6 of U.S. Patent Application Serial No. 10/014,980, which has since issued as U.S. Patent No. 6,759,073. Included with this response is a Terminal Disclaimer, disclaiming the terminal part of the statutory term of any patent granted on the above-identified application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C § 154 to §156 and §173 as presently shortened by any terminal disclaimer of U.S. Patent No. 6,759,073. Accordingly, it is respectfully requested that the obviousness-type double patenting rejection be withdrawn.

Synopsis of the Invention

Stability is a critical parameter for compositions containing oils. In an unstable composition, changes may occur over time which results in, for example, coalescence and / or separation of layers (phase separation), wherein the layers have different colors and / or densities. A variety of methods have been developed in order to stabilize oils by preventing coalescence and separation, but is often a complex and expensive process. Additionally, many oils, in particular triglycerides of fatty acids as well as the fatty acids themselves, exhibit an unpleasant flavor profile that is difficult to mask in compositions intended for oral consumption. This is particularly disadvantageous in the case of beverage compositions, wherein the fatty acids have a greater potential of contacting sensory units (*i.e.*, "taste buds") in the oral cavity prior to delivery to the remainder of the digestive tract.

In a particularly surprising benefit of the present invention, it has been found that the objectionable flavor and odor typically associated with fatty acid materials (as defined herein) is minimized or even removed through use of a stabilizing system comprising pectin and alginate compounds. Additionally, the present inventors herein have discovered that defined combinations

of pectin and alginate stabilize fatty acid materials over extended periods of time, for example, at least about 75 days, and often about one year, while stabilizing the fatty acid (*i.e.*, oil) in the composition and preventing separation of oil and water phases and, further, by minimizing or completely removing the objectionable flavor normally associated with the fatty acid.

The Rejection under 35 U.S.C. § 102


The Examiner has rejected Claims 1-4 under 35 U.S.C. § 102 (b) as being anticipated by Kumabe et al., U.S. Patent Number 5,853,761 (herein "Kumabe").

Applicants respectfully submit that Claim 1 has been amended herein to include subject matter that the Examiner has indicated is allowable. Moreover, Claims 2-4 ultimately depend from the presently amended Claim 1. As such, it is believed that Claims 1-4 are now in allowable form. Thus, it is respectfully requested that the Examiner withdraw the present rejection of Claim 1-4 under 35 U.S.C. § 102 (b) and allow the claims as amended herein.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the Examiner's rejection under 35 U.S.C. § 102 and the Obviousness-type Double Patenting Rejection have all been overcome. Withdrawal of these rejections and a Notice of Allowance is therefore respectfully requested.

Respectfully submitted,

By 
Bryn M. Taylor
Attorney for Applicants
Registration No. 55,668
Telephone: (513) 634-2084

Date: July 14, 2004
Customer No. 27752